

**SUMMARY MINUTES
DURHAM BOARD OF ADJUSTMENT**

SEPTEMBER 12, 2000

The meeting was called to order at 8:30 a.m.

ROLL CALL

The Clerk called the roll and recorded attendance as follows:

MEMBERS SEATED

Lavonia Allison
William Brian, Chairman
James Edney
Corinne Mabry, Vice Chair
Selina Mack - Welcome
Kristen Rosselli - Welcome
David Smith
Kathy Wright-Moore

MEMBERS NOT SEATED

MEMBERS ABSENT

Louis Goetz

STAFF PRESENT

Gene Bradham, Director, Inspection Services
Dennis Doty, Planner
Betty Johnson, Planning Staff
Brenda Johnson, Clerk, Board of Adjustment
Karen Sindelar, Deputy City Attorney
Lowell Siler, Deputy County Attorney
Pratt Simmons, Zoning Enforcement Administrator
Landy Void, Zoning Enforcement Officer
Helen Youngblood, Key Leader

SWEARING IN OF WITNESSES

The Chairman administered the oath to the following applicants and witnesses:

Helen Youngblood
Dennis Doty
Hutch Johnson
Harris Gupton
Clark Havighurst
Ronnie Sturdivant
Norman George

Betty Johnson
Leon Meyers
Stephen Ritz
Howard Partner
Dianne Sturdivant
Eugen Brown

Conflicts of Interest/Early Dismissals

The Chairman asked if there were any conflicts of interest with any of the Board members and any of the cases before the Board today. He also asked if any Board members had to leave early.

Mr. Brian noted that he has a conflict with Case B00-32 and removed himself from being seated on that case. Ms. Youngblood noted that we had two new Board members, Ms. Kristen Rosselli and Ms. Selina Mack and that both of them had come by the Planning Department and listed to the tape of the previous meeting and would be seated on Case B00-32. She also noted that Ms. Lavonia Allison had not heard the tape of the previous meeting and could not seat on that case. There were no requests for early dismissal.

HEARING AND DETERMINATION OF CASES

Mr. Doty asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary. All Board members concurred.

Chairman Brian read the following statement into the record:

This Board is a quasi-judicial Board of record and as such, all testimony will be recorded. I'd like to ask at this point are there any members of this Board that would have any conflicts of interest with regard to the cases that are before us today? Are there any early dismissals at this time?

The proceedings of this Board will be governed by the zoning laws, as recorded.

As Chair of the Board of Adjustment, I'd like to explain the procedures used for Board hearings. The hearings are quasi-judicial. The process is similar to a court proceeding. First the staff will present an overview of the case then the applicant presents its evidence. The opponents, if there are any, will then present their evidence. The applicant may then present its rebuttal. Board members are asked to refrain from questions until each speaker has completed his or her presentation. All testimony is given under oath. In a few moments I will give the oath to all witnesses as a group. All witnesses are asked to sign the roster at the podium if you have not done so.

Testimony should consist of facts each witness knows directly, not hearsay. All witnesses should come to the podium and speak directly into the microphone so their testimony can be recorded on tape.

Written evidence must be presented to the Chair and a determination will be made about whether it should be accepted. Written evidence can be inspected by the other side. All evidence, written or oral, can be objected to.

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Witnesses are subject to cross-examination. Opposing representatives will have a chance to question witnesses after all witnesses for the other side have testified. If you wish to cross-examine you must raise your hand when I ask for other speakers in favor or against the application and I will recognize you. I would like to note that Board members may have visited each site under consideration as a part of their preparation for this meeting.

The Board will vote on each case after the presentation of all evidence, pro and con, concerning the case. The law requires that in order for an applicant's request to be granted 5 of the 7 voting Board members must approve the request.

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SEATED: Mr. Edney, Ms. Mabry, Ms. Mack, Ms. Rosselli, Mr. Smith, Ms. Wright-Moore

Case B00-32 City

A request by Leon Myers c/o Robert E. Whalen and Anna Ho Whalen for a Minor Special Use Permit to construct a 1,327 square foot detached accessory dwelling on a 2.43-acre tract as per Sections 4A.4.3.1; 7.23; 8.1.15; 13.1. of the Durham Zoning Ordinance. The property is located at 3620 Dover Road and zoned R-10. Tax Map: 265-3-10 (Pin #0810-18-30-3481).

Staff Presentation was made by: Dennis Doty

Persons Appearing in Support: Leon Meyers, Hutch Johnson, Architect; Howard Partner, Landscape Architect

Persons Appearing in Opposition: Clark Havenhurst

Staff Recommendation was: Approval

Motion: Ms. Wright-Moore made a motion to grant the request as submitted based on findings of fact by the Board that Sections 4A.1.3, 7.16, 9, 10 and 13.1 of the Durham Zoning Ordinance had been met.

Conditions:

1. That the guesthouse construction shall be scheduled concurrently with the construction of the primary dwelling.
2. That the guest house use shall be limited strictly to uses permitted under the accessory dwelling section of the Ordinance.
3. That any land clearing between the guesthouse and Dover road shall be limited to clearing required for construction.
4. That the screening proposed on the north property line as indicated in the August 28th drawing shall be installed as early as possible in the construction sequence.

Seconded By: Mr. Smith

Vote: 6 to 0

Action: Approved

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SEATED: Ms. Allison, Mr. Brian, Mr. Edney, Ms. Mabry, Ms. Mack, Mr. Smith, Ms. Wright-Moore

Case B00-37 City

A request by Immanuel Free Will Baptist Church for a Minor Special Use Permit for a private school for grades K through 5 as per Sections 4A.1.3, 9, 10 and 13.1 of the Durham Zoning Ordinance. The property is located at 2103 Ellis Road and zoned R-20. Tax Map 641-2-8,9,10,12.12A (Pin #0749-01-07-4169;-0749-01-07-5128; 0749-01-07-6166; 0749-01-07-8147; 0749-01-07-9200).

Staff Presentation was made by: Dennis Doty

Persons Appearing in Support: Harry Guthrie, Norman George of National Heritage Academy School Management Facility

Persons Appearing in Opposition: None

Staff Recommendation was: Approval

Motion: Mr. Smith made a motion to approve the request as submitted based on findings of fact by the Board that Sections 4A.1.3, 9, 10 and 13.1 of the Durham Zoning Ordinance had been met.

Conditions:

1. That a walk/access be provided to the restroom facilities and playground.
2. That the site improvements be in place in 60 days.
3. That the applicant not begin operation until the restroom facilities are in place and the sewage disposal complies with all applicable State and County requirements.
4. That the applicant hook up to public water and sewer within 180 days.
5. That enrollment be limited to 57 students until all public water and sewer hoop ups are on site and in use.

Seconded By: Ms. Mabry

Vote: Mr. Edney, Mr. Smith, Ms. Wright-Moore (Yes)
Ms. Allison, Mr. Brian, Ms. Mabry, Ms. Mack (No)

Action: Denied (3 to 4)

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SEATED: Ms. Allison, Mr. Brian, Mr. Edney, Ms. Mabry, Ms. Mack, Mr. Smith, Ms. Wright-Moore

Case B00-17 City

A request by Ronnie Sturdivant for an Appeal of an Administrative Decision as per Sections 4D.3.8(1), 14.4.5, 16.2.2, and 17 of the Durham Zoning Ordinance. The property is located at 605 West Chapel Hill Street and zoned GC. Tax Map 155-2-2 (Pin # 821-07-67-6345).

Note: Mr. Sturdivant requested that this case be continued to a later date so that he may have time to meet with his attorney. He further noted that he had not been given enough notice to properly prepare his case. The staff indicated that Mr. Sturdivant had received several notices, by mail, as the other neighbors did on August 23, several phone calls by staff as well as a hand-delivered notice by Mr. Landy Void, Zoning Enforcement Officer. Staff noted that the September 26 agenda is already full and that Mr. Sturdivant's case would need to be continued to the October meeting if the Board desired to continue the case.

Opposition: Mr. Steve Ritz, President of the Morehead Neighborhood Association and Mr. Eugene Brown was present in opposition to the applicant's appeal and also in opposition to the request for continuance. They stated that they felt the applicant had had ample time to prepare for this case and they had taken time off of work for this issue and wanted it resolved today.

After a lengthy discussion, the Chair asked for a motion on this case.

Motion: Ms. Allison made a motion to continue this case to the October 24, 2000 meeting.

Seconded By: Ms. Mabry

Vote: 7-0

Action: Approved

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There being no further business to come before the Board, the meeting was adjourned at approximately 11:20 a.m.

Respectfully submitted,

**Brenda Johnson, Clerk
Durham Board of Adjustment**